

Caps on Damages

Over 25 states have enacted laws that place a cap on damages in medical liability actions. Of these laws, states vary widely in the amount of the cap and type of damages that are capped. For example, California has a \$250,000 cap on noneconomic damages. By comparison, Nebraska has a \$1.25 million cap on total damages. (of which qualified health care providers shall only be liable for \$200,000). In addition, state laws vary in the type of circumstances in which the cap applies. For example, Michigan has a secondary cap on noneconomic damages of \$500,000 that applies in cases where the plaintiff is hemiplegic, paraplegic, or quadriplegic due to an injury to the brain or spinal cord, or where the plaintiff has permanently impaired cognitive capacity. Likewise in many states the cap on damages does not apply in cases of gross malpractice. Finally, caps in many states are adjusted annually for inflation.

At least eleven states have enacted caps that have been challenged and overturned by state courts as unconstitutional. Many of the states, such as Ohio, Oregon, and Washington, are now facing a medical liability crisis. In addition, existing caps in at least three states are either currently facing a legal challenge or will likely face a legal challenge in the near future. The Constitution in several states also explicitly prohibit caps on damages, such as Arizona, Pennsylvania, and Wyoming

Below please find a summary of state laws that cap damages in medical liability actions (regular type) and state laws that have been legally challenged and overturned by state courts (bold).

Caps on Damages - Summary of State Laws and Legal Challenges

(Note: with the exception of Georgia and Pennsylvania, the following information does not address state caps on punitive damages.)

key: *Hard fixed cap with no exceptions for certain injuries*
Cap adjusted annually or scheduled to increase on specific dates

Alabama- None

\$400,000 cap on noneconomic damages; \$1 million cap on wrongful death damages, overturned, *Smith v. Shulte*, 671 So.2d 1331 (1991), cert. denied, 517 U.S. 1220 (1996).

Alaska-\$400,000 cap on noneconomic damages, or \$8000 multiplied by the injured party's life expectancy, whichever is greater. For severe medical impairment/ disfigurement, limits are the greater of \$1 million or life expectancy multiplied by \$25,000.

Arizona-None - Constitution prohibits limiting recoverable damages

Arkansas-None

California-\$250,000 cap on noneconomic damages

Colorado-\$1 million cap on total damages, including any derivative claim by any other claimant, of which non-economic losses shall not exceed \$250,000 (including any derivative

claim by any other claimant). Upon good cause shown and if the court determines such limit would be unfair, the court may award damages in excess of the limit. In this case, the court may award the present value of additional future damages only for loss of such excess future earnings or such excess future medical and other health care costs, or both.

Connecticut-None

Delaware-None

D.C.-None

Florida- None, if neither party requests arbitration or the defendant refuses to arbitrate. If the plaintiff refuses, economic and noneconomic damages are capped at \$350,000 (interpreted by the courts to apply to each claimant). If the parties arbitrate, noneconomic damages are capped at \$250,000.

Georgia-\$250,000 cap on punitive damages

Hawaii-\$375,000 cap on noneconomic damages, with exceptions for certain types of damages, ie. mental anguish

Idaho- \$250,000 cap on non-economic damages per claimant in personal injury and wrongful death actions. The cap will be adjusted annually beginning July 1, 2004 based on the average annual wage. The limit does not apply to causes of action arising out of willful or reckless misconduct, or felonious actions.

Illinois- None

\$500,000 cap on noneconomic damages, overturned *Best v. Taylor Machine Works*, 689 N.E.2d 1057 (Ill. 1997).

Indiana-\$750,000 cap on total damages for any act of malpractice that occurs after 12/31/89 and before 7/1/99. \$1.25 million total cap for any act of malpractice that occurs after 6/30/99. Health care providers are not liable for more than \$250,000 for an occurrence of malpractice any amount awarded in excess of \$250,000 will be paid through the Patient Compensation Fund.

Iowa-None

Kansas-\$250,000 cap on noneconomic damages. This is the total amount of non-economic damages recoverable by each party from all of the defendants.

Previous law struck down as unconstitutional, *Kansas Malpractice Victims Coalition v. Bell*, 243 Kan. 333, 757 P.2d 251 (1988).

Kentucky- None. Constitution prohibits cap on damages.

Louisiana-\$500,000 cap on total damages, excluding damages recoverable for future medical care

Maine-\$400,000 cap on noneconomic damages in wrongful death actions

Maryland-\$500,000 cap on noneconomic damages in any action for personal injury or wrongful death arising on or after October 1, 1994. The cap will be increased by \$15,000 on October 1 of each year beginning in 1995. In wrongful death actions with two or more claimants or beneficiaries, the judge may award up to 150% of the limit.

Massachusetts-\$500,000 cap on noneconomic damages, with exceptions for proof of substantial disfigurement or permanent loss or impairment

Michigan-\$280,000 cap on noneconomic damages, adjusted annually for inflation, except in cases where the plaintiff is hemiplegic, paraplegic, or quadriplegic due to an injury to the brain or spinal cord, or where the plaintiff has permanently impaired cognitive capacity, then noneconomic damages shall not exceed \$500,000.

Minnesota-None

Mississippi-\$500,000 cap on noneconomic damages for any action for injury based on malpractice or breach of standard of care. Cap does not apply if the judge determines that a jury may impose punitive damages or to damages for disfigurement. Cap will be adjusted to \$750,000 for claims for causes of action filed on or after July 1, 2011 but before July 1, 2017. Cap will be adjusted again on July 1, 2017 to \$1,000,000

Missouri-\$465,000 cap on noneconomic damages, adjusted annually for inflation

Montana-\$250,000 cap on noneconomic damages

Nebraska-\$1.25 million in total damages. Health care providers who qualify under the Hospital-Medical Liability Act (i.e. carry minimum levels of liability insurance and pay surcharge into excess coverage fund) shall not be liable for more than \$200,000 in total damages. Any excess damages shall be paid from the excess coverage fund.

Nevada-\$350,000 cap on noneconomic damages awarded to each plaintiff from each defendant except when:

- (1) the defendant's conduct constitutes gross malpractice, or
- (2) the court determines by clear and convincing evidence that a higher award is justified because of exceptional circumstances.

New Hampshire-None

\$875,000 cap on noneconomic damages, overturned, *Brannigan v. Usitalso*, 587 A.2d 1232 (N.H. 1991).

\$250,000 cap on noneconomic damages in medical malpractice, overturned, *Carson v. Maurer*, 424 A.2d 825 (N.H. 1980).

New Jersey-None

New Mexico-\$600,000 cap on total damages, excluding punitive damages and past and future medical care. Health care providers personal liability shall not exceed \$200,000, any award in excess of this amount shall be paid by the patient compensation fund.

New York-None

North Carolina-None

North Dakota-\$500,000 cap on noneconomic damages. Economic damage awards in excess of \$250,000 are subject to judicial review for reasonableness.

Previous law struck down as unconstitutional. *Arneson v. Olson*, 270 N.W.2d (N.D. 1978).

Ohio- Establishes a sliding cap on non-economic damages. The cap shall not exceed the greater of \$250,000 or three times the plaintiff's economic loss up to a maximum of \$350,000 for each plaintiff or \$500,000 per occurrence.

The maximum cap will increase to \$500,000 per plaintiff or \$1,000,000 per occurrence for a claim based on either (A) a permanent and substantial physical deformity, loss of use of a limb, or loss of a bodily organ system, or (B) a permanent physical functional injury that permanently prevents the injured person from being able to independently care for self and person life sustaining activities.

Note: The Ohio Legislature's previous attempts to enact a law with a cap on non-economic damages were overturned by the Ohio Supreme Court. For example, \$250,000-500,000 sliding scale cap on noneconomic damages, overturned, *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio 3d 451, 715 N.E. 2d (1999).

Oklahoma-None

Oregon-None

\$500,000 cap on noneconomic damages, overturned, *Lakin v. Senco Products*, 987 P.2d 463 (Or. 1999).

Pennsylvania-Constitution prohibits caps on non-economic damages. Punitive damages are capped at 2 times actual damages.

Rhode Island-None

South Carolina-None

South Dakota-\$500,000 cap on total general damages

Tennessee-None

Texas-\$500,000 cap on all civil damages for wrongful death, indexed for inflation since 1977. The cap does not apply to medical, hospital, and custodial care received before judgment or required in the future.

\$500,000 cap on noneconomic damages (adjusted annually), overturned as applied to cases other than wrongful death, *Rose v. Doctors Hospital*, 801 S.W. 2d 841 (Tex. 1990).

Utah-\$250,000 cap on noneconomic damages for causes of action arising before July 1, 2001, \$400,000 cap on noneconomic damages for causes of action arising after July 1, 2002, indexed annually for inflation thereafter.

Vermont-None

Virginia-\$1.5 million cap on total damages for acts occurring on or after Aug. 1, 1999. This cap is increased by \$50,000 annually beginning on or after July 1, 2000 until July 1, 2006. On July 1, 2007 and July 1, 2008 the cap is increased by \$75,000. The last increase shall be July 1, 2008.

Washington-None

Sliding cap on noneconomic damages, overturned, *Sophie v. Fiberboard Corp.*, 771 P.2d 711 (Wash. 1989).

West Virginia- \$250,000 cap on non-economic damages per occurrence, regardless of the number of plaintiffs and number of defendants. The cap increases to \$500,000 per occurrence, for the following types of injuries; permanent and substantial physical deformity, loss of use of a limb or loss of a bodily organ system; or permanent physical or mental functional injury that permanently prevents the injured person from being able to independently care for himself or herself and perform life sustaining activities. The limits only apply to defendants who have at least \$1,000,000 per occurrence in medical liability insurance. The limits will be adjusted annually for inflation up to \$375,000 per occurrence or \$750,000 for injuries that fall within the exception.

Wisconsin-\$350,000 cap on noneconomic damages for bodily injury or death. The cap applies to each occurrence on or after May 1, 1995 and is adjusted at least annually for inflation. For wrongful death actions, noneconomic damages shall not exceed \$350,000 per occurrence in the case of a deceased adult, and \$500,000 per occurrence for a deceased minor.

Wyoming-None - Constitution prohibits caps

For more information please contact the AMA Advocacy Resource Center at (312) 464-4765.